

Message Text

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ACTION ARA-20

INFO OCT-01 ISO-00 EB-11 COME-00 OPIC-12 AID-20 IGA-02

TRSE-00 CIAE-00 INR-10 NSAE-00 RSC-01 DODE-00 L-03

OMB-01 DRC-01 SP-03 CIEP-02 /087 W

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R 151203Z MAY 74

FM AMEMBASSY BUENOS AIRES

TO SECSTATE WASHDC 6459

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E.O. 11652: N/A

TAGS: ECON, ETRD, CU, AR

SUBJECT: WESTINGHOUSE EXPORT CASE

REF: (A) STATE 055325

(B) BUENOS AIRES 1887

(C) STATE 49550

SUMMARY: UNWISE AND POSSIBLY IMPROPER ACCEPTANCE OF ORDER FOR THERMO KING REFRIGERATION UNITS BY ARGENTINE DEALER/REPRESENTATIVE OF THERMO KING HAS CREATED SITUATION WHERE UNFAVORABLE PUBLICITY IN ARGENTINA CONCERNING US CUBAN DENIAL POLICY MAY AGAIN ARISE. EMBASSY REQUESTS ADDITIONAL INFORMATION WHICH MAY BE AVAILABLE TO WASHINGTON AGENCIES FROM FILES OR FROM FURTHER CONSULTATION. THERMO KING IS A WESTINGHOUSE SUBSIDIARY.
END SUMMARY.

1. FROM MID-MARCH UNTIL 6 MAY, EMBASSY HAD NO REASON TO BELIEVE THAT USDOC REFUSAL OF EXPORT LICENSE TO THERMO KING, REPORTED REF C, WAS LIKELY TO CAUSE ADDED STRAIN TO US/GOA RELATIONS. ON MARCH 15 EMBOFF SECURED DETAILS FROM LOCAL WESTINGHOUSE REP WHICH LARGELY CONFIRMED INFORMATION PROVIDED REF C. AT THAT TIME, WESTINGHOUSE REP WAS UNCERTAIN CONCERNING SERIOUSNESS OR FIRMNESS OF CALEGARI INTEREST IN THERMO KING RAILWAY CAR REFRIGERATION UNITS. HE THOUGHT THAT IF UNITS WERE NOT AVAILABLE FOR
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ANY REASON, CALEGARI, THE ARGENTINE RAILWAY CAR MANUFACTURER,

WOULD SEEK OTHER SUPPLIER OR CONTRACT ONLY FOR ICE-COOLED REFRIGERATOR CARS. HE WAS NOT COMPLETELY INFORMED.

2. ON MAY 6, OFFICIALS OF AIR CAR, THERMO KING'S DEALER/ REPRESENTATIVE IN BUENOS AIRES, VISITED EMBASSY. THEY REPORTED THAT CALEGARI AND TRADE ASSOCIATION OF EQUIPMENT BUILDERS, WHICH INCLUDES CALEGARI, WERE MAKING UGLY NOISES CONCERNING NON-AVAILABILITY THERMO KING UNITS, THREATENING TO SUE AIR CAR AND SUGGESTING THAT AFFAIR WOULD GET UNFAVORABLE PUBLICITY. DURING SUBSEQUENT SEVERAL DAYS WITH COOPERATION OF AIR CAR AND WESTINGHOUSE REP HERE, WE HAVE BEEN ABLE TO RECONSTRUCT IN LARGE MEASURE, THOUGH NOT COMPLETELY, CHAIN OF EVENTS LEADING TO PRESENT SITUATION.

3. CUBAN PURCHASING MISSION DISCUSSED DESIRE FOR REFRIGERATED RAILWAY CARS WITH CALEGARI IN OCTOBER AND NOVEMBER, 1973. CALEGARI INVESTIGATED SUITABILITY OF THERMO KING UNITS AND ASSURANCES FROM AIR CAR THAT THESE COULD BE OFFERED. IT IS EVIDENT THAT AIR CAR EAGERLY SOUGHT TO PROVE THESE UNITS WERE SUITABLE FOR THE CALEGARI PURPOSES AND SOUGHT QUOTATIONS, SPECIFICATIONS, ETC, FROM THERMO KING. APPARENTLY, WITHOUT MORE THAN VERBAL ASSURANCES FROM AIR CAR CONCERNING THE AVAILABILITY OF THE UNITS, CALEGARI SIGNED A CONTRACT WITH THE CUBAN PURCHASING MISSION ON JANUARY 11, 1974 SPECIFYING THAT IT WOULD SUPPLY REFRIGERATED CARS EQUIPPED WITH THERMO KING UNITS GUARANTEED FOR ONE YEAR AND GUARANTEEING SERVICE FACILITIES AND AVAILABILITY OF PARTS FOR TEN YEARS. CALEGARI PLACED ITS FIRM PURCHASE ORDER WITH AIR CAR ON 15 JAN FOR 60 UNITS VALUED AT \$328,380. ON JAN 18 AIR CAR PROVIDED CALEGARI WITH A LETTER STATING IT ACCEPTED THE ORDER.

4. IT IS EVIDENT THAT AT THIS TIME THERMO KING HAD NOT AGREED TO PROVIDE THE UNITS. AT LEAST AIR CAR HAS PRODUCED NO DOCUMENT WHICH SO INDICATES. ON THE CONTRARY, THERMO KING WROTE AIR CAR ON FEB 12 STATING THAT IT WISHED TO WITHDRAW FROM ALL NEGOTIATIONS INVOLVING THE UNITS BECAUSE IT REALIZED THAT EXPORT OF UNITS DESTINED TO BE INCORPORATED IN PRODUCTS SOLD TO CUBA WAS PROHIBITED BY US LAW AND REGULATION.

5. THERE SEEMS TO HAVE BEEN UNDOCUMENTED URGING BY AIR CAR TO LIMITED OFFICIAL USE

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THERMO KING TO RECONSIDER AND BY MARCH 12 THERMO KING WAS REQUESTING A FIRM ORDER FROM AIR CAR TO BE ATTACHED TO ITS APPLICATION FOR WAIVER FOR EXPORT PERMIT.

6. WE KNOW THAT THERMO KING DID SEEK EXPORT PERMIT. DESPITE FACT THERMO KING APPLICATION WAS DENIED MARCH 12, WE HAVE SEEN THERMO KING LETTER TO AIR CAR OF MARCH 26 STATING THERMO KING WAS CONTINUING TO SEEK EXPORT LICENSES AND SUGGESTING THAT

AIR CAR MAINTAIN CONTACT CONCERNING THE ORDER BUT WARNING AIR CAR NOT TO ALLOW PROCESSING OF ANY LETTER OF CREDIT. IN EARLY APRIL AIR CAR SENT TO THERMO KING COPIES OF THE CALEGARI/ CUBAN CONTRACT AT THERMO KING'S REQUEST. PRESUMABLY, THIS WAS TO BE USED IN SUPPORT FOR A REAPPLICATION FOR AN EXPORT LICENSE.

7. ON APRIL 17 THERMO KING WROTE TO AIR CAR, PRESUMABLY IN RESPONSE TO A TELEX ASKING THE STATUS OF AIR CAR'S ORDER, TO STATE: A) THERMO KING'S ORIGINAL REQUEST FOR EXPORT LICENSE HAD BEEN DENIED (NO DATE GIVEN); B) THERMO KING WAS APPEALING DECISION AND SUBMITTING RE-APPLICATION; C) THERMO KING STILL HOPED TO SECURE EXPORT LICENSE; D) ADVISING AIR CAR TO KEEP ORDER ON A "HOLD" BASIS. IT WAS THIS COMMUNICATION, RECEIVED BY AIR CAR ABOUT MAY 3, IN CONJUNCTION WITH THE PRESSURES BEING EXHIBITED BY CALEGARI THAT INDUCED AIR CAR OFFICIALS TO VISIT EMBASSY.

8. EMBASSY, SO FAR, HAS ONLY SOUGHT TO ATTEMPT RECONSTRUCT PAST AND ACTUAL SITUATION ALTHOUGH WE HAVE POINTED OUT TO AIR CAR THAT THIS IS TYPE OF PROBLEM COMPLETELY DIFFERENT FROM THAT FACED BY US AUTO SUBSIDIARIES OPERATING IN ARGENTINA. WE HAVE TOLD AIR CAR THAT WE WILL BE CONSULTING WITH WASHINGTON AND THAT WE WILL BE IN CONTACT WITH THEM AGAIN AT THE EARLIEST POSSIBLE DATE.

9. EMBASSY BELIEVES THAT THE MAJOR PART OF THIS PROBLEM STEMS FROM FACT THAT, WITHOUT PROPER AUTHORIZATION FROM THERMO KING, AIR CAR INDICATED ITS ACCEPTANCE OF CALEGARI'S ORDER ON JANUARY 18. AIR CAR FEELS IT MAY BE SUBJECT TO LEGAL ACTION AND DAMAGES, BOTH FINANCIAL AND TO ITS REPUTATION, IF THERMO KING UNITS ARE NOT PROVIDED. IT IS SEEKING TO CONVINCE EMBASSY THAT BEST SOLUTION TO PROBLEM WOULD BE PROVISION OF THERMO KING UNITS WHICH REQUIRE EXPORT LICENSES.

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10. EMBASSY FEELS THAT AIR CAR IS CORRECT IN ITS BELIEF THAT IF CALEGARI SHOULD SUE AIR CAR OR SEEK TO PRESSURE AIR CAR, THERMO KING, AND USG BY BEGINNING CAMPAIGN INCLUDING PUBLICITY ON THIS ISSUE, A NEW IRRITANT TO BILATERAL RELATIONS, WOULD RESULT. THIS IS A POINT THAT EMBASSY COVERED IN REF B. EMBASSY IS NOT YET IN A POSITION TO JUDGE WHETHER CALEGARI AND ITS POSSIBLE SYMPATHIZERS MAY CHOOSE TO PUSH THIS ISSUE AND SO CANNOT JUDGE HOW IMMINENT OR SERIOUS THE THREAT OF ADVERSE PUBLICITY MAY BE. AS A PREVENTATIVE MEASURE WE INTEND, ON MAY 14 TO DISCUSS THIS CASE WITH BEST CONTACTS IN FOREIGN OFFICE AND TO SUGGEST THAT THEY MAY WISH TO INVESTIGATE SITUATION AND POSSIBLY DISCOURAGE CALEGARI FROM PURSUING A LINE OF ACTION WHICH COULD DEVELOP IRRITANT TO BILATERAL RELATIONS. HILL

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